

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
LUFKIN DIVISION

ARIBA, INC.,  
a Delaware corporation,

Plaintiff,

v.

EMPTORIS, INC.,  
a Delaware corporation,

Defendant.

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Case No. 9:07-cv-00090-RHC

**FILED**

*P.M. October 29 20 08*  
**DAVID J. MALAND, CLERK**  
**U.S. DISTRICT COURT**  
By *SA [Signature]*  
**DEPUTY**

**JURY VERDICT FORM**

**Question No. 1**

Do you find by a preponderance of the evidence that Emptoris' software infringed one or more claims of the '018 patent? Answer "Yes" or "No" for each claim.

Claim 16: Yes

Claim 17: Yes

Claim 18: Yes

Claim 20: Yes

Claim 21: Yes

Claim 22: Yes

**If you answered "Yes" to any claim listed in Question 1 then answer Question No. 1a.**

**Question No. 1a**

Do you find from clear and convincing evidence that such infringement was willful?

Yes     

No X

**Please answer Question No. 2.**

**Question No. 2**

Do you find by clear and convincing evidence that Emptoris' infringement of claims 69 or 82 of the '**114 patent** was willful?

Yes ☒

No ☐

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**Please answer Question No. 3.**

**Question No. 3**

Do you find by clear and convincing evidence that any of the following claims of the '114 patent are invalid for being obvious to one of ordinary skill in the art in light of any of the combinations of references listed below? Answer "Yes" or "No" for each claim and reference:

	Claim 69	Claim 82
(A) U.S. Patent No. 5,862,244 to Huberman and the article by Dyer and Kagel entitled "Bidding in Common Value Auctions"	<u>No</u>	<u>No</u>
(B) U.S. Patent No. 5,862,244 to Huberman and the Kern County Ordinance	<u>No</u>	<u>No</u>
(C) FCC Auctions ("Second Report and Order") and the article by Dyer and Kagel entitled "Bidding in Common Value Auctions"	<u>No</u>	<u>No</u>
(D) FCC Auctions ("Second Report and Order") and the Kern County Ordinance	<u>No</u>	<u>No</u>
(E) GE Auctions (1994-1996) and the article by Dyer and Kagel entitled "Bidding in Common Value Auctions"	<u>No</u>	<u>No</u>
(F) GE Auctions (1994-1996) and the Kern County Ordinance	<u>No</u>	<u>No</u>

**Please answer Question No. 4.**

**Question No. 4**

Do you find by clear and convincing evidence that any of the following claims of the '018 patent are invalid for being obvious to one of ordinary skill in the art in light of either of the combinations of references listed below? Answer "Yes" or "No" for each claim and reference:

	Claim 16	Claim 17	Claim 18	Claim 20	Claim 21	Claim 22
(A) U.S. Patent No. 6,023,685 to Brett and the article entitled "Auctions and Bidding" by McAfee and McMillan	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>
(B) GE Auctions (1994-1996) and the article entitled "The Michigan Auction Bot" by Wurman	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>	<u>No</u>

**Please answer Question No. 5.**

**Question No. 5**

Do you find by a preponderance of the evidence that Ariba unreasonably delayed in filing a lawsuit asserting its claims that Emptoris infringes the '018 patent and that this delay prejudiced Emptoris?

Yes         
No X

**If you answered “Yes” for any claim of the ‘018 patent in Question No. 1 and “No” for that same claim in Question No. 4 please answer Questions 6, 7, 8, and 9. Otherwise please go to the instructions immediately before Question 10.**

**Question No. 6**

For the ‘018 patent, what sum of money, if any, do you find from a preponderance of the evidence would fairly and adequately compensate Ariba for the profits it would have made on sales lost: (Answer in dollars and cents)

(A) from December 2005 through the day before this suit was filed: \$ 517,572

and

(B) from the date this suit was filed (April 19, 2007) through today: \$ 957,256

**Please answer Question No. 7.**

**Question No. 7**

For any infringing sales of the **'018 patent** by Emptoris for which Ariba has not proven its entitlement to lost profits, what sum of money, if any, do you find is adequate as a reasonable royalty to compensate Ariba the conduct you found to infringe:

(A) from December 2005 through the day before this suit was filed: \$ 287,362  
and

(B) from the date this suit was filed (April 17, 2007) through today: \$ 321,176

**Please answer Question No. 8.**

**Question No. 8**

What royalty rate, if any, do you find from a preponderance of the evidence would be adequate to compensate Ariba for any conduct you found to infringe the **'018 patent** that occurs in the future? Answer in a percentage of gross sales revenue:

1.5 %

**Please answer Question No. 9.**

**Question No. 9**

Do you find by a preponderance of the evidence that Ariba has properly marked substantially all its software with the **'018 patent** number since December 2005? Answer "Yes" or "No."

Yes X

No \_\_\_\_\_

If you answered "No" for either claim of the '114 patent for Question 3 please answer Questions 10, 11, 12 and 13. Otherwise, please initial and date the verdict form.

**Question No. 10**

For the '114 patent, what sum of money, if any, do you find would fairly and adequately compensate Ariba for the profits it would have made on sales lost:

(A) from the commencement of infringement in November 2005 through the day before

this suit was filed: \$ 1,323,666

and

(B) from the date this suit was filed (April 19, 2007) through today: \$ 957,256

**Please answer Question No. 11.**

**Question No. 11**

For any infringing sales of the '114 patent by Emptoris for which Ariba has not proven its entitlement to lost profits, what sum of money, if any, do you find is adequate as a reasonable royalty to compensate Ariba the conduct you found to infringe:

(A) from the commencement of infringement in November 2005 through the day before

this suit was filed: \$ 291,763

and

(B) from the date this suit was filed (April 19, 2007) through today: \$ 326,087

**Please answer Question No. 12.**

**Question No. 12**

What royalty rate, if any, do you find would be adequate to compensate Ariba for any conduct you found to infringe the '**114 patent** that occurs in the future? Answer in a percentage of gross sales revenue:

1.5 %

**Please answer Question No. 13.**

**Question No. 13**

Do you find by a preponderance of the evidence that Ariba properly marked substantially all its software with the '**114 patent** number since November 2005? Answer "Yes" or "No":

Yes X

No

**– Please Date and Initial the Verdict Form –**

Dated: 10-29-2008

DJC  
Initials of Jury Foreperson